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Thursday, July 28, 2011

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

re: *Proposed Amendment of Rule 7.3 of the MRPC*
ADM File No. 2002-24



Dear Clerk:

With two changes, I endorse the proposed amendment to Rule 7.3 of the Michigan Rules of Professional Conduct (MRPC) and urge the court to approve the proposed amended rule.

The first change is a proposed addition to MRPC 7.3(c)(2) by adding the following sentence at the end: *If the written solicitation concerns a filed lawsuit in any court, the communication shall not be transmitted less than thirty days after the complaint was filed.*

The rationale for this addition is that criminal and civil complaints are filed and attorneys are contacting named defendants before the summons has been served or the warrant served on defendants.

This is especially true in divorce actions.

Oftentimes, plaintiffs in divorce lawsuits ask their attorneys to hold service for a period of time. It may be asked to see if the defendant will change her or his ways. It may occur because a plaintiff wants to obtain a personal protection order before service is effectuated.

Also, there are situations where injunctive orders are issued, but not yet served because of timing issues. Due to a solicitation from an attorney, the defendant defies the

injunctive relief before the injunction and complaint have been served. In essence, an attorney's solicitation "tips off" the defendant, causing harm, destruction or physical injury before the defendant was served.

The second change is the recommendation to add the words "*in at least thirteen point type*" after the words "Advertising Material" three times in proposed rule 7.3(c)(3) so that the subsection will read as follows:

Every written communication from a lawyer described in subsections (1) and (2) shall include the words "Advertising Material" in at least thirteen point type on the outside envelope, if any, and at the beginning and ending of any written communication, unless the lawyer has a family or prior professional relationship with the recipient. If a written communication is in the form of a self-mailing brochure, pamphlet, or postcard, the words "Advertising Material" in at least thirteen point type shall appear on the address panel of the brochure, pamphlet, or postcard. The requirement to include the words "Advertising Material" in at least thirteen point type shall apply regardless whether the written communication is transmitted by regular United States mail, private carrier, electronically, or in any other manner.

The rationale to require a point size on the communication is that it is absolutely clear it is advertising and not a legal document being sent. There should be no doubt an attorney is sending advertising.

Thank you for allowing me to communicate.

Sincerely yours,



Sheldon G. Larky

SGL:s